

BEFORE NANCY KEENAN, SUPERINTENDENT *OF*. PUBLIC INSTRUCTION

STATE OF MONTANA

\* \* \* \* \*

JUDITH E. FUHRMAN,	)	
	)	
Appellant,	)	
	)	OSPI 224-93
vs .	)	
	)	
BOARD OF TRUSTEES, GARFIELD COUNTY	)	<u>DECISION AND ORDER</u>
SCHOOL DISTRICT NO. 1,	)	
	)	
Respondents.	)	

\* \* \* \* \*

Judith Fuhrman is appealing the June 18, 1993, Order of Yellowstone County Superintendent, Buzz Christiansen, acting for the Garfield County Superintendent. Superintendent Christiansen dismissed Ms. Fuhrman's appeal because it was made after the 10 days allowed by § 20-4-206, MCA.

**Ms.** Fuhrman was a non-tenured principal employed by the Trustees of Garfield County School District No. 1 [hereinafter "the Trustees"]. On April 13, 1993, they informed her that her contract would not be renewed. Pursuant to § 20-4-206, MCA, she asked for a written statement of the reasons for her termination. She received the statement on April 23, 1993. On May 4, 1993, 11 days later, she appealed to the County Superintendent. The County Superintendent granted the Trustees' motion to dismiss for lack of jurisdiction.

Ms. Fuhrman appealed two issues to this Superintendent. One, the 30 day time to appeal of § 20-3-210, MCA, not the 10 day period of § 20-4-206, MCA, applies to this case. Two, if § 20-4-206, MCA,

applies, the 10 day period is extended by Rule 6(a), M.R.Civ.P.

#### STANDARD OF REVIEW

On review of orders dismissing appeals this Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 553 P.2d 407, 170 Mont. 296 (1976).

#### DECISION AND ORDER

The County Superintendent correctly concluded that the time for appealing the veracity of the Trustees' written statement of the reasons for termination ran before the appeal was filed. The order dismissing is AFFIRMED.

#### MEMORANDUM OPINION

A. Does the procedure of § 20-3-210, MCA, or § 20-4-206, MCA, apply to this case? Section 20-4-206, MCA, applies. It is well settled law that a specific statute controls over a general statute. Section 20-4-206, MCA, is the specific statute stating the procedure available to a non-tenured teacher who wishes to challenge termination. It controls over § 20-3-210, MCA, which governs school controversies generally, not non-tenured teacher terminations specifically.

This is supported by prior Montana Supreme Court and State School Superintendent decisions. The Montana Supreme Court has held that the specific process of § 20-4-207, MCA, controls over the general process of § 2-4-701, MCA. Carbon County School District No. 28 Trustees v. Spivey, 805 P.2d 61, 247 Mont. 33

(1991). This Superintendent has held that the specific process of § 20-4-207, MCA, controls over the general process of § 20-3-210, MCA. Roberts v. Board of Trustees of School District 645, OSPI 190-90, decided March 20, 1991, 10 Ed.Law 91 (1991).

B. Does Rule 6, M.R.Civ.P., extend the 10 days allowed for appeal under § 20-4-206, MCA? No, § 20-4-206, MCA, gives a terminated non-tenured teacher a substantive right -- the right to appeal -- and establishes a 10 day statute of limitation on exercising that right. Keller v. School District No. 1, 774 P.2d 209, 237 Mont. 481 (1989).

Statutes of limitation are legislative grants of jurisdictional power to the tribunal hearing the matter. MCI Telecommunications Corp. v. Montana Department of Public Service Regulation, 858 P.2d 364, 260 Mont. 175 (1993). After the time allowed for appealing a school board's act has passed, neither a County Superintendent, this Superintendent, nor a Court has the jurisdiction to set aside the board's act.

Statutes of limitation are substantive, not procedural. The Rules of Civil Procedure govern procedural matters in District Court, such as the calculation of time allowed to respond to a motion. They do not expand statutes of limitation set by the Legislature.

In MCI the Montana Supreme Court held that the three day mailing rule found in Rule 6(e), M.R.Civ.P, does not automatically extend the time for filing an administrative appeal because that would be an extension of the district court's jurisdiction. The

Court wrote:


The district court's jurisdiction is controlled by the period of time prescribed by the legislature and is limited to the time provided by the applicable statute. The right to an appeal of an administrative agency's ruling is created by statute and is limited by the provisions of the statute as to the time within which the right must be asserted. *Zeller v. Folsom* (N.D.N.Y. 1956), 105 F.Supp. 615, 617. Where the time for filing an appeal is dictated by the statute which confers the right to appeal, Rule 6(e) cannot be applied to extend the time for filing as this would be an extension of the court's jurisdiction. . . .

MCI v. Dept. of Public Service Reg., 260 Mont. at 178, 858 P.2d at 366, emphasis added.

The MCI decision discusses district court jurisdiction over administrative decisions and Rule 6(e), M.R.Civ.P., but the reasoning applies to County Superintendents and Rule 6(a), M.R.Civ.P. The time for appealing the truthfulness of a school board's reasons for terminating a non-tenured teacher is set by a statute that creates the substantive right to an appeal -- § 20-4-206, MCA. Rule 6(a) cannot extend the 10 day limit in § 20-4-206, MCA. To do so would extend County Superintendents' jurisdiction over school boards beyond that granted by the Legislature.

Ms. Fuhrman received the statement April 23, 1993, and filed an appeal on May, 4, 1993, eleven days later. Given the holding of MCI v. Dept. of Public Service Reg., the County Superintendent's decision to dismiss this appeal is correct and must be affirmed.

DATED this 7 day of September, 1994.

  
NANCY KEENAN

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DECISION AND ORDER

**CERTIFICATE OF SERVICE**

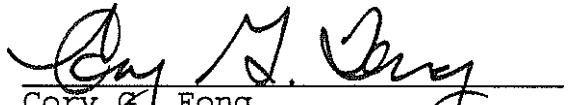
THIS IS TO CERTIFY that on this 12 day of September, 1994, a true and exact copy of the foregoing Order was mailed, postage prepaid, to the following:

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